THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

Writ Petition No.15064 of 2007

Dated: 30th July, 2007.

Between:

J.Sreenivasa Rao, S/o.J.Rama Gopal Rao,
Aged 37 years, Occ: Business, R/o.H.No.1-10-27/1,
Street No.3, Ashok Nagar, Hyderabad

... Petitioner

and

1. The Superintendent of Police, Karimnagar District.
2. The Station House Officer, Metpally, Karimnagar District.
3. Vidya Sagar Rao, S/o.Madhusudhan Rao,
   Aged about 38 years, Occ: Govt. Servant, R/o.12-5-97,
   Kala Nagar, Metpally, Karimnagar District.

... Respondents

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Oral Order: **(per DSRV, J.)**

Heard the learned Counsel appearing for petitioner; the learned Assistant Government Pleader for Home, representing the learned Advocate General, appearing for respondents 1 and 2; and the learned Counsel appearing for respondent No.3.

2. This writ petition is filed by one J.Srinivasa Rao seeking a writ of *Habeas Corpus* for the production and release of Miss Gandra Harshita from the illegal custody of respondent No.3.

3. The factual background appears to be that respondent No.3 is the natural parent of child, by name Gandra Harshita, aged about 7 years. The mother of the child, who is no other than the wife of respondent No.3, died about four years ago and since then the child has been in the custody and care of the petitioner, who is

admittedly the maternal uncle of the child. The petitioner has been residing along with his parents, meaning thereby that the child has been in the actual custody of her maternal uncle, aunt, maternal grandparents and the son of the maternal uncle of the child, who is of the same age of the child before the Court.

4. It is the allegation of the petitioner that the child since neglected and respondent No.3, father of the child, was convicted for the offences punishable under Sections 306 and 498-A, I.P.C., in Sessions Case No.448 of 2004 by the Assistant Sessions Judge, Siddipet, by judgment dated 21-6-2007, and was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay
a fine of Rs.500/- for the offence punishable under Section 306 I.P.C., and also to undergo imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- for the offence punishable under Section 498-A, I.P.C. It is the further allegation that the child was whisked away by respondent No.3 in the absence of the wife of the petitioner in the capacity of the natural father of the child. This took place about two months ago. Hence, the present writ petition.

5. During the hearing of the matter on 23-7-2007, we directed respondent No.2-The Station House Officer, Metpally, Karimnagar District to ensure the presence of respondent No.3-father of the child and the child before this Court. Accordingly and in obedience of the said order, today, the child has been produced before this Court; and along with the child, the paternal grand-parents and the father of the child on one side; and the maternal grand-parents, the maternal uncle/petitioner, his wife (hereinafter referred to hereinafter as 'the aunt') and the son of the maternal uncle on the other side, are present.

6. We examined the child at the first instance *in camera*.
We could see the panic in her eyes and behaviour. She, in fact, refused to have the company of no one else except her aunt. She has been, all through, in the course of our examination, in the lap of her aunt and at every stage and at every question, we could see the kind and amount of fear she has been suffering from, rather she has been, in a way, suffering from a sort of fear psychosis at that tender age.

7. This situation of the child is highly deplorable and in our considered view, whoever may be responsible for her present state, violated with all violence at his or their command on the child's mental freedom and luxury of the childhood.

8. Merely because somebody is maternal side or paternal side of the child, no one has any right to invade on the right of both the mental and physical freedoms of the child. What the child lost today is a shame to both the parties, if at all we can say so.

9. From the conduct of the child what we further noticed conspicuous is that the only other person with whom the child expressed her willingness to be associated with was -- her maternal uncle.

10. In other words, only two people could take the child into their lap, they are no other than the maternal uncle and the aunt of the child. The child was looking at both the grand-parents with scary eyes and we could also perceive that the only other person, and the best friend is -- the child's maternal uncle's son.
Upon being questioned by us, the child's maternal uncle's son, by name Master Harish, stated that both Miss Harshita and he are classmates and are studying in the same school. They are very affectionate and friendly to each other and they used to be always in all smiles. But, even that pleasant talk from her best friend, the child was not able to come out of the scare.

11. In view of the said situation and after watching carefully all the circumstances, more particularly the strong mental and physical bond of the child with her aunt, maternal uncle and their son, we are inclined to give the custody of the child to the petitioner.

12. The above order has been passed under the impelling circumstances presented by the learned Counsel appearing for both the parties, though not actually required to be passed by this Court.

13. In other words, in a writ of *Habeas Corpus*, the question of giving the custody of the child may not be very relevant, but, while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, this Court is forced to go into the

incidental aspect of the custody of the child also.

14. For the foregoing and in view of the availability of the child being made present before this Court, as directed, we do not feel it inexpedient to pass any other order except as the one passed above relating to the custody of the child allegedly kidnapped.

15. With the above observations and directions, the writ petition is closed, at the stage of admission. There shall be no order as to costs.

16. It is needless to mention that respondent No.3 can avail other legal remedies as provided under law as regards the custody of the child.

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D.S.R.VARMA, J.

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D.APPA RAO, J.

30th July, 2007.
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